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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/121,368	07/23/1998	BRADLEY C. LINDEN	S13.12-0036	3233

23838 7590 02/01/2008  
KENYON & KENYON LLP  
1500 K STREET N.W.  
SUITE 700  
WASHINGTON, DC 20005

EXAMINER
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RODRIGUEZ, CRIS LOIREN

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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02/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/121,368	<b>Applicant(s)</b> LINDEN ET AL.	
	<b>Examiner</b> CRIS L. RODRIGUEZ	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164 and 166-168 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164, 166-168 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Reissue Applications***

1. Claims 1-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164, 166-168 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth below. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion below in this Office action.

- There is no proper acknowledgement of the applicant's duty of disclosure in any declaration of record. The only declarations that acknowledge the duty of disclosure were filed on 11/16/1998. They state that the declarant "acknowledges my duty to disclose information which may be material to examination of the application." The required statement required by the rules was "material to patentability under 37 CFR 1.56." However, the Office was also accepting "material to examination under 37 CFR 1.56(a)" as well, and continues to do so for declaration filed in pending applications prior to June 1, 2008.
- However, the statement in the 11/16/1998 declaration does not refer to 37 CFR 1.56(a), and so is not acceptable. A new declaration is required that properly acknowledges the duty of disclosure. If filed prior to June 1, 2008, the new declaration may use either the "material to examination under 37 CFR 1.56(a)" language or the "material to patentability under 37 CFR 1.56" language, although applicant should consider using the

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"material to patentability under 37 CFR 1.56" language which is actually what 37 CFR 1.63(b)(3) requires.

- The 3.73b statement is improper. The statement filed on 7/23/1998 is executed by a senior patent attorney. On 8/22/2001, in response to the 5/8/2001 Office action objecting to the 3.73(b) statement because the senior patent attorney was not authorized to act on behalf of the assignee (see paragraph 1 on page 2 of the Office action), a paper coded as OATH was filed. It is a copy of a paper executed by an officer of the assignee purporting to authorize the senior patent attorney to act on behalf of the assignee. However, the paper is dated April 21, 2001, well after the 7/23/1998 3.73b statement was signed. A fresh 3.73b statement supporting the assignee's consent to the reissue application is necessary.

Any inquiry concerning this communication should be directed to CRIS L. RODRIGUEZ at telephone number (571)272-4964.

  
Cris L. Rodriguez  
SPE  
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